

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health

803 KAR 2:401
Adoption of 29 CFR Part 1926.10-.20

RELATES TO: KRS Chapter 338

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules and regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1926.

Section 1. The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part 1926.10-.20 of the Code of Federal Regulations revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference.

Section 2. Public Notice.

(1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday. (16 Ky.R. 1098; eff. 12-15-89.)

SUBPART B
GENERAL INTERPRETATIONS
(as adopted by 803 KAR 2:401)

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29 CFR 1926.10

SCOPE OF SUBPART

(a) This subpart contains the general rules of the Secretary of Labor interpreting and applying the construction safety and health provisions of section 107 of the Contract Work Hours and Safety Standards Act (83 Stat. 96). Section 107 requires as a condition of each contract which is entered into under legislation subject to Reorganization Plan Number 14 of 1950 (64 Stat. 1267), and which is for construction, alteration, and/or repair, including painting and decorating, that no contractor or subcontractor contracting for any part of the contract work shall require any laborer or mechanic employed in the performance of the contract to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health or safety, as determined under construction safety and health standards promulgated by the Secretary by regulation.

29 CFR 1926.11

COVERAGE UNDER SECTION 103 OF THE ACT DISTINGUISHED

(a) Coverage under section 103. It is important to note that the coverage of section 107 differs from that for the overtime requirements of the Contract Work Hours and Safety Standards Act. The application of the overtime requirements is governed by section 103, which subject to specific exemptions, includes: (1) Federal contracts requiring or involving the employment of laborers or mechanics (thus including, but not limited to, contracts for construction), and (2) contracts assisted in whole or in part by Federal loans, grants, or guarantees under any statute "providing wage standards for such work." The statutes "providing wage standards for such work" include statutes for construction which require the payment of minimum wages in accordance with prevailing wage findings by the Secretary of Labor in accordance with the Davis-Bacon Act. A provision to section 103 excludes from the overtime requirements work where the Federal assistance is only in the form of a loan guarantee or insurance.

(b) Coverage under section 107. To be covered by section 107 of the Contract Work Hours and Safety Standards Act, a contract must be one which (1) is entered into under a statute that is subject to Reorganization Plan No. 14 of 1950 (64 Stat. 1267); and (2) is for "construction, alteration, and/or repair, including painting and decorating."

29 CFR 1926.12

REORGANIZATION PLAN NO. 14 OF 1950

(a) General provisions. Reorganization Plan No. 14 of 1950 relates to the prescribing by the Secretary of Labor of "appropriate standards, regulations, and procedures" with respect to the enforcement of labor standards under Federal and federally assisted contracts which are subject to various statutes subject to the Plan. The rules of the Secretary of Labor implementing the Plan are published in Part 5 of this title. Briefly, the statutes subject to the Plan include the Davis-Bacon Act, including its extension to Federal-aid highway legislation subject to 23 U.S.C. 113, and other statutes subject to the Plan by its original terms, statutes by which the Plan is expressly applied, such as the Contract Work Hours Standards Act by virtue of section 104(d) thereof.

(b) The Plan.

(1) The statutes subject to Reorganization Plan No. 14 of 1950 are cited and briefly described in the remaining paragraphs of this section. These descriptions are general in nature and not intended to convey the full scope of the work to be performed under each statute. The individual statutes should be resorted to for a more detailed scope of the work.

(2) Federal-Aid Highway Acts. The provisions codified in 23 U.S.C. 113 apply to the initial construction, reconstruction, or improvement work performed by contractors or subcontractors on highway projects on the Federal-aid systems, the primary and secondary, as well as their extensions in urban areas, and the Interstate System, authorized under the highway laws providing for the expenditure of Federal funds upon the Federal-aid system. As cited in 41 Op. A.G. 488, 496, the Attorney General ruled that the Federal-Aid Highway Acts are subject to Reorganization Plan No. 14 of 1950.

(3) National Housing Act (12 U.S.C. 1713, 1715a, 1715e, 1715k, 1715l(d)(3) and (4), 1715v, 1715w, 1715x, 1743, 1747, 1748, 1748h-2, 1750g, 1715l(h)(1), 1715z(j)(1), 1715z-1, 1715y(d), Subchapter 1x-A and 1x-B, 1715z-7). This act covers construction which is financed with assistance by the Federal Government through programs of loan and mortgage insurance for the following purposes:

(i) Rental Housing-Section 1713 provides mortgage and insurance on rental housing of eight or more units and on mobile-home courts.

(ii) Section 1715a-Repealed.

(iii) Cooperative Housing-Section 1715e authorizes mortgage insurance on cooperative housing of five or more units as well as supplementary loans for improvement of repair or resale of memberships.

(iv) Urban Renewal Housing-Section 1715k provides mortgage insurance on single family or multifamily housing in approved urban renewal areas.

(v) Low or Moderate Income Housing-Section 1715L(d)(3) and (4) insures mortgages on low-cost single family or multifamily housing.

(vi) Housing for Elderly-Section 1715v provides mortgage insurance on rental housing for elderly or handicapped persons.

(vii) Nursing Homes-Section 1715w authorizes mortgage insurance on nursing home facilities and major equipment.

- (viii) Experimental Housing-Section 1715x provides mortgage insurance on single family or multifamily housing with experimental design of materials.
- (ix) War Housing Insurance-Section 1743 not active.
- (x) Yield Insurance-Section 1747 insures investment returns on multifamily housing.
- (xi) Armed Services Housing-Section 1748b to assist in relieving acute shortage and urgent need for family housing at or in areas adjacent to military installations.
- (xii) Defense Housing for Impacted Areas-Section 1748h-2 provides mortgage insurance on single family or multifamily housing for sale or rent primarily to military or civilian personnel of the Armed Services, National Aeronautics and Space Administration, or Atomic Energy Commission.
- (xiii) Defense Rental Housing-Section 1750g provides for mortgage insurance in critical defense housing areas.
- (xiv) Rehabilitation-Section 1715L (h)(1) provides mortgage insurance for nonprofit organizations to finance the purchase and rehabilitation of deteriorating or substandard housing for subsequent resale to low-income home purchasers. There must be located on the property five or more single family dwellings of detached, semidetached, or row construction.
- (xv) Homeowner Assistance-Section 1715Z(j)(1) authorizes mortgage insurance to nonprofit organizations or public bodies or agencies executed to finance sale of individual dwellings to lower income individuals or families. Also includes the rehabilitation of such housing if it is deteriorating or substandard for subsequent resale to lower income home purchasers.
- (xvi) Rental Housing Assistance-Section 1715Z-1 authorizes mortgage insurance and interest reduction payments on behalf of owners of rental housing projects designed for occupancy by lower income families. Payments are also authorized for certain State or locally aided projects.
- (xvii) Condominium Housing-Section 1715y(d) provides mortgage insurance on property purchased for the development of building sites. This includes waterlines and water supply installations, sewer lines and sewage disposal installations, steam, gas, and electrical lines and installations, roads, streets, curbs, gutters, sidewalks, storm drainage facilities, and other installations or work.
- (xviii) Group Medical Practice Facilities-Subchapter LX-B authorizes mortgage insurance for the financing of construction and equipment, of facilities for group practice of medicine, optometry, or dentistry.
- (xix) Nonprofit Hospitals-1715z-7 authorizes mortgage insurance to cover new and rehabilitated hospitals, including initial equipment.
- (4) Hospital Survey and Construction Act, as amended by the Hospital and Medical Facilities Amendments of 1964 (42 U.S.C. 291e). The provisions of this Act cover construction contracts made by State or local authorities or private institutions under Federal grant-in-aid programs for the construction of hospitals and other medical facilities.
- (5) Federal Airport Act (49 U.S.C. 1114(b)). The act provides grant-in-aid funds for airport construction limited to general site preparation runways, taxiways, aprons, lighting appurtenant thereto, and fire, rescue, and maintenance buildings. The act excludes construction intended for use as a public parking facility for

passenger automobiles and the cost of construction of any part of an airport building except such of those buildings or parts of buildings to house facilities or activities directly related to the safety of persons at the airport.

(6) Housing Act of 1949 (42 U.S.C. 1459). Construction contracts awarded by local authorities financed with the assistance of loans and grants from the Federal Government. The construction programs are for slum clearance and urban renewal which includes rehabilitation grants, neighborhood development programs, neighborhood renewal plans, community renewal, demolition projects, and assistance for blighted areas. See the Housing Act of 1964, paragraph (b)(21) of this section, concerning financial assistance for low-rent housing for domestic farm labor.

(7) School Survey and Construction Act of 1950 (20 U.S.C. 636). This act provides for a Federal grant-in-aid program to assist in the construction of schools in federally affected areas.

(8) Defense Housing & Community Facilities & Services Act of 1951 (42 U.S.C. 1592i). Inactive Program.

(9) United States Housing Act of 1937 (42 U.S.C. 1416). This statute covers the construction of low-rent public housing and slum clearance projects awarded by local authorities. These projects are financed with the assistance of loans and grants from the Federal Government. The slum clearance is the demolition and removal of buildings from any slum area to be used for a low-rent housing project.

(10) Federal Civil Defense Act of 1950 (50 U.S.C. App. 2281). This act provides for Federal assistance to the several States and their political subdivisions in the field of civil defense which includes procurement, construction, leasing, or renovating of materials and facilities.

(11) Delaware River Basin Compact (sec. 15.1, 75 Stat. 714). This joint resolution creates, by intergovernmental compact between the United States, Delaware, New Jersey, New York, and Pennsylvania, a regional agency for planning, conservation, utilization, development, management and control of the water and related sources of the Delaware River.

(12) Cooperative Research Act (20 U.S.C. 332a(c)). This act provides Federal grants to a university, college, or other appropriate public or nonprofit private agency or institution for part or all of the cost of constructing a facility for research or for research and related purposes. Research and related purposes means research, research training, surveys, or demonstrations in the field of education, or the dissemination of information derived therefrom, or all of such activities, including (but without limitation) experimental schools, except that such term does not include research, research training, surveys, or demonstrations in the field of sectarian instruction or the dissemination of information derived therefrom. Construction includes new buildings, and the acquisition, expansion, remodeling, replacement, and alteration of existing buildings and the equipping of new buildings and existing buildings.

(13) Health Professions Educational Assistance Act of 1963 (42 U.S.C. 292d (c)(4), 293a(c)(5)). The provisions of this act provide for grants to assist public and nonprofit medical, dental, and similar schools for the construction, expansion, or renovation of teaching facilities.

(14) Mental Retardation Facilities Construction Act (42 U.S.C. 295(a)(2)(D), 2662(5), 2675(a)(5)). This act authorizes Federal financial assistance in the construction of centers for research on mental retardation and related aspects of human development, of university-affiliated facilities for the mentally retarded and of facilities for the mentally retarded.

(15) Community Mental Health Centers Act (42 U.S.C. 2685(a)(5)). This act authorizes Federal grants for the construction of public and other nonprofit community mental health centers.

(16) Higher Education Facilities Act of 1963 (20 U.S.C. 753). This act authorizes the grant or loan of Federal funds to assist public and other nonprofit institutions of higher education in financing the construction, rehabilitation, or improvement of academic and related facilities in undergraduate and graduate schools.

(17) Vocational Educational Act of 1963 (20 U.S.C. 35f). This act provides for Federal grants to the various States for construction of area vocational education school facilities.

(18) Library Services and Construction Act (20 U.S.C. 355e(a)(4)). This act provides for Federal assistance to the various States for the construction of public libraries.

(19) Urban Mass Transportation Act of 1954 (49 U.S.C. 1609). This act provides for grants and loans to assist States and local public bodies and agencies thereof in financing the acquisition, construction, reconstruction, and improvement of facilities and equipment for use, by operation or lease or otherwise, in mass transportation service in urban areas and in coordinating such service with highway and other transportation in such areas.

(20) Economic Opportunity Act of 1964 (42 U.S.C. 2947). This act covers construction which is financed with assistance of the Federal Government for the following purposes:

(i) Authorizes Federal assistance for construction of projects, buildings and works which will provide young men and women in rural and urban residential centers with education, vocational training, and useful work experience (Title I).

(ii) Authorizes financial assistance for construction work planned and carried out at the community level for antipoverty programs (Title II):

(A) Authorizes loans to low income rural families by assisting them to acquire or improve real estate or reduce encumbrances or erect improvements thereon, and to participate in cooperative associations and/or to finance nonagricultural enterprises which will enable such families to supplement their income (Title III);

(B) Authorizes loans to local cooperative associations furnishing essential processing, purchasing, or marketing services, supplies, or facilities predominantly to low-income rural families (Title III);

(C) Authorizes financial assistance to States, political subdivisions of States, public and nonprofit agencies, institutions, organizations, farm associations, or individuals in establishing housing, sanitation, education, and child day-care programs for migrants and other seasonally employed agricultural employees and their families (Title III).

(iii) Authorizes loans or guarantees loans to small businesses for construction work (Title IV).

(iv) Authorizes the payment of the cost of experimental, pilot, or demonstration projects to foster State programs providing construction work experience or training for unemployed fathers and needy people (Title V).

(21) Housing Act of 1964 (42 U.S.C. 1486(f); 42 U.S.C. 1452b(e)). Provides financial assistance for low-rent housing for domestic farm labor. The Act further provides for loans, through public or private agencies, where feasible, to owners or tenants of property in urban renewal areas to finance rehabilitation required to conform the property to applicable code requirements or carry out the objectives of the urban

renewal plan for the area.

(22) The Commercial Fisheries Research and Development Act of 1964 (16 U.S.C. 779e(b)). This Act authorizes financial assistance to State agencies for construction projects designed for the research and development of the commercial fisheries resources of the Nation.

(23) The Nurse Training Act of 1964 (42 U.S.C. 296a(b)(5)). This act provides for grants to assist in the construction of new facilities for collegiate, associate degree, and diploma schools of nursing, or replacement or rehabilitation of existing facilities of such schools.

(24) Elementary and Secondary Education Act of 1965 (20 U.S.C. 241i, 848). The purpose of the act is to provide financial assistance to local educational agencies serving areas with concentrations of children from low-income families for construction in connection with the expansion or improvement of their educational programs.

(25) Federal Water Pollution Control Act, as amended by the Water Quality Act of 1965 (3 U.S.C. 466e(g)). Provides for financial assistance to States or municipalities for construction of facilities in connection with the prevention and control of water pollution. This includes projects that will control the discharge into any waters of untreated or inadequately treated sewage.

(26) Appalachian Regional Development Act of 1965 (40 U.S.C. App. 402). Authorizes Federal assistance in the construction of an Appalachian development highway system; construction of multicounty demonstration health facilities, hospitals, regional health, diagnostic and treatment centers, and other facilities for health; seal and fill voids in abandoned mines and to rehabilitate strip mine areas; construction of school facilities for vocational education; and to assist in construction of sewage treatment works.

(27) National Technical Institute for the Deaf Act (20 U.S.C. 684(b)(5)). Provides for financial assistance for institutions of higher education for the establishment, construction, including equipment and operation, of a National Institution for the Deaf.

(28) Housing Act of 1959 (12 U.S.C. 1701(q)(c)(3)). This act authorizes loans to nonprofit corporations to be used for the construction of housing and related facilities for elderly families. Also, the provisions of the act provide for rehabilitation, alteration, conversion or improvement of existing structures which are otherwise inadequate for proposed dwellings used by such families.

(29) College Housing Act of 1950, as amended (12 U.S.C. 1749a(f)). This act provides for Federal loans to assist educational institutions in providing housing and other educational facilities for students and faculties.

(30) Housing and Urban Development Act of 1965 (42 U.S.C. 1500c-3, 3107). This act provides for Federal assistance for the following purposes:

(i) Grants to States and local public bodies to assist in any construction work to be carried out under the open-space land and urban beautification provisions contained therein. It provides for parks and recreation areas, conservation of land and other natural resources, and historical and scenic purposes.

(ii) Grants to local public bodies and agencies to finance specific projects for basic public water facilities (including works for the storage, treatment, purification, and distribution of water), and for basic public sewer facilities (other than "treatment works" as defined in the Federal Water Pollution Control Act).

(iii) Grants to any local public body or agency to assist in financing neighborhood facilities. These facilities must be necessary for carrying out a program of health, recreational, social, or similar community service and located so as to be available for the use of the area's low or moderate income residents.

(31) National Foundation on the Arts and the Humanities Act of 1965 (20 U.S.C. 954(k)). The act establishes the "National Foundation on the Arts and the Humanities" which may provide matching grants to groups (nonprofit organizations and State and other public organizations) and to individuals engaged in creative and performing arts for the entire range of artistic activity, including construction of necessary facilities.

(32) Public Works and Economic Development Act of 1965 (42 U.S.C. 3222). This act provides for Federal assistance for the following purposes:

(i) Grants for the acquisition or development of land or Improvements for public works or development facility usage in redevelopment areas. It authorizes loans to assist in financing the purchase or development of land for public works which will assist in the creation of long-term employment opportunities in the area.

(ii) Loans for the purchase or development of land and facilities (including machinery and equipment) for industrial or commercial usage within redevelopment areas; guarantee of loans for working capital made to private borrowers by private lending institutions in connection with direct loan projects; and to contract to pay to, or on behalf of, business entities locating in redevelopment areas, a portion of the interest costs which they incur in financing their expansions from private sources.

(iii) Loans and grants to create economic development centers within designated county economic development districts.

(33) High-Speed Ground Transportation Study (40 U.S.C. 1636(b)). This act provides for financial assistance for construction activities in connection with research and development of different forms of high-speed ground transportation and demonstration projects relating to intercity rail passenger service.

(34) Heart Disease, Cancer and Stroke Amendments of 1965 (42 U.S.C. 299(b)(4)). This act provides for grants to public or nonprofit private universities, medical schools, research, institutions, hospitals, and other public and nonprofit agencies and institutions, or associations thereof to assist in construction and equipment of facilities in connection with research, training, demonstration of patient care, diagnostic and treatment related to heart disease, cancer, stroke, and other major diseases.

(35) Mental Retardation Facilities and Community Mental Health Centers Construction Act Amendments of 1965 (20 U.S.C. 618(g)). These provisions provide for grants to institutions of higher education for construction of facilities for research or for research and related purposes relating to education for mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, crippled, or other health impaired children who by reason thereof require special education.

(36) Vocational Rehabilitation Act Amendments of 1965 (29 U.S.C. 41a(b)(4)). This act authorizes grants to assist in meeting the costs of construction of public or other nonprofit workshops and rehabilitation facilities.

(37) Clean Air and Solid Waste Disposal Acts (42 U.S.C. 3256). This act provides for financial assistance to public (Federal, State, interstate, or local) authorities, agencies, and institutions, private agencies and institutions, and individuals in the construction of facilities for solid-waste disposal. The term construction

includes the installation of initial equipment.

(38) Medical Library Assistance Act of 1965 (42 U.S.C. 280b-3(b)(3)). This act provides for grants to public or private non-profit agencies or institutions for the cost of construction of medical library facilities.

(39) Veterans Nursing Home Care Act (38 U.S.C. 5035(a)(8)). The construction industry health and safety standards do not apply to this act since it is not subject to Reorganization Plan No. 14 of 1950.

(40) National Capital Transportation Act of 1965 (40 U.S.C. 682(b)(4)). This act provides for Federal assistance to the National Capital Transportation Agency for construction of a rail rapid transit system and related facilities for the Nation's Capital.

(41) Alaska Centennial-1967 (80 Stat. 82). The program under this legislation has expired.

(42) Model Secondary School for the Deaf Act (80 Stat. 1028). This act provides for funds to establish and operate, including construction and initial equipment of new buildings, expansion, remodeling, and alteration of existing buildings and equipment thereof, a model secondary school for the deaf to serve the residents of the District of Columbia and nearby States.

(43) Allied Health Professions Personnel Training Act of 1966 (42 U.S.C. 295h(b)(2)(E)). This act provides for grants to assist in the construction of new facilities for training centers for allied health professions, or replacement or rehabilitation of existing facilities for such centers.

(44) Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3310; 12 U.S.C. 1715c; 42 U.S.C. 1416). This act provides for Federal assistance for the following purposes:

(i) Grants to assist in the construction, rehabilitation, alteration, or repair of residential property only if such residential property is designed for residential use for eight or more families to enable city demonstration agencies to carry out comprehensive city demonstration programs (42 U.S.C. 3310).

(ii) Amends the National Housing Act (12 U.S.C. 1715c) and the Housing Act of 1937 (42 U.S.C. 1416). See these acts for coverage.

(45) Air Quality Act of 1967 (42 U.S.C. 1857j-3). This act provides for Federal assistance to public or nonprofit agencies, institutions, and organizations and to individuals, and contracts with public or private agencies, institutions, or persons for construction of research and development facilities and demonstration plants relating to the application of preventing or controlling discharges into the air of various types of pollutants.

(46) Elementary and Secondary Education Amendments of 1967 (Title VII-Bilingual Education Act) (20 U.S.C. 880b-6). This act provides for Federal assistance to local educational agencies or to an institution of higher education applying jointly with a local educational agency for minor remodeling projects in connection with bilingual education programs to meet the special needs of children with limited English-speaking ability in the United States.

(47) Vocational Rehabilitation Amendments of 1967 (29 U.S.C. 42a(c)(3)). This act authorizes Federal assistance to any public or nonprofit private agency or organization for the construction of a center for vocational rehabilitation of handicapped individuals who are both deaf and blind which shall be known as the National Center for Deaf-Blind Youths and Adults. Construction includes new buildings and expansion, remodeling, alteration and renovation of existing buildings, and initial equipment of such new, newly acquired, expanded, remodeled, altered, or renovated buildings.

(48) National Visitor Center Facilities Act of 1968 (40 U.S.C. 808). This act authorizes agreements and leases with the owner of property in the District of Columbia known as Union Station for the use of all or a part of such property for a national visitor center to be known as the National Visitor Center. The agreements and leases shall provide for such alterations of the Union Station Building as necessary to provide adequate facilities for visitors. They also provide for the construction of a parking facility, including necessary approaches and ramps.

(49) Juvenile Delinquency Prevention and Control Act of 1968 (42 U.S.C. 3843). This act provides for Federal grants to State, county, municipal, or other public agency or combination thereof for the construction of facilities to be used in connection with rehabilitation services for the diagnosis, treatment, and rehabilitation of delinquent youths and youths in danger of becoming delinquent.

(50) Housing and Urban Development Act of 1968 (including New Communities Act of 1968) (42 U.S.C. 3909). This act provides for Federal assistance for the following purposes:

(i) Guarantees, and commitments to guarantee, the bonds, debentures, notes, and other obligations issued by new community developers to help finance new community development projects.

(ii) Amends section 212(a) of the National Housing Act, adding section 236 for "Rental Housing for Lower Income Families" and section 242 "Mortgage Insurance for Nonprofit Hospitals" thereto.

(51) Public Health Service Act Amendment (Alcoholic and Narcotic Addict Rehabilitation Amendments of 1968) (42 U.S.C. 2681, et seq.). This act provides for grants to a public and nonprofit private agency or organization for construction projects consisting of any facilities (including post-hospitalization treatment facilities for the prevention and treatment of alcoholism or treatment of narcotic addicts.)

(52) Vocational Education Amendments of 1968 (20 U.S.C. 1246). This act provides for grants to States for the construction of area vocational education school facilities. The act further provides grants to public educational agencies, organizations, or institutions for construction of residential schools to provide vocational education for the purpose of demonstrating the feasibility and desirability of such schools. The act still further provides grants to State boards, to colleges and universities, to public educational agencies, organizations or institutions to reduce the cost of borrowing funds for the construction of residential schools and dormitories.

(53) Postal Reorganization Act (39 U.S.C. 410(d)(2)). This Act provides for construction, modification, alteration, repair, and other improvements of postal facilities located in leased buildings.

(54) Airport and Airway Development Act of 1970 (Pub. L. 91-258, section 52(b)(7)). This Act provides for Federal financial assistance to States and localities for the construction, improvement, or repair of public airports.

(55) (i) Public Law 91-230. This Act provides for federal financial assistance to institutions of higher learning for the construction of a National Center on Educational Media and Materials for the Handicapped. The program under this statute expires on July 1, 1971. Public Law 91-230, section 662(1).

(ii) Education of the Handicapped Act (20 U.S.C. 12326, 1404(a)). This Act provides for financial assistance to States for construction, expansion, remodeling, or alteration of facilities for the education of handicapped children at the preschool, elementary school, and secondary school levels.

(56) Housing and Urban Development Act of 1970 (Pub. L. 91-609, section 707(b)). This Act provides for grants to States and local public agencies to help finance the development of open-space or other land in urban areas for open-space uses. This Act becomes effective on July 1, 1971.

(57) Developmental Disabilities Services and Facilities Construction Amendments of 1970 (Pub. L. 91-517, section 135(a)(5)). This Act authorizes grants to States for construction of facilities for the provision of services to persons with developmental disabilities who are unable to pay for such services.

(58) Rail Passenger Service Act of 1970 (Pub. L. 91-518, section 405(d)). This statute provides that the National Railroad Passenger Corporation may construct physical facilities necessary to intercity rail passenger operations within the basic national rail passenger system designated by the Secretary of Transportation.

(c) VA and FHA housing. In the course of the legislative development of section 107, it was recognized that section 107 would not apply to housing construction for which insurance was issued by the Federal Housing Authority and Veterans' Administration for individual home ownership. Concerning construction under the National Housing Act, Reorganization Plan No. 14 of 1950 applies to construction which is subject to the minimum wage requirements of section 212(a) thereof (12 U.S.C. 1715c).

29 CFR 1926.13

INTERPRETATION OF STATUTORY TERMS

(a) The terms "construction," "alteration," and "repair" used in section 107 of the Act are also used in section 1 of the Davis-Bacon Act (40 U.S.C. 276a), providing minimum wage protection on Federal construction contracts, and section 1 of the Miller Act (40 U.S.C. 270a), providing performance and payment bond protection on Federal construction contracts. Similarly, the terms "contractor" and "subcontractor" are used in those statutes, as well as in Copeland (Anti-Kickback) Act (40 U.S.C. 276c) and the Contract Work Hours and Safety Standards Act itself, which apply concurrently with the Miller Act and the Davis-Bacon Act on Federal construction contracts and also apply to most federally assisted construction contracts. The use of the same or identical terms in these statutes which apply concurrently with section 107 of the Act have considerable precedential value in ascertaining the coverage of section 107.

(b) It should be noted that section 1 of the Davis-Bacon Act limits minimum wage protection to laborers and mechanics "employed directly" upon the "site of the work." There is no comparable limitation in section 107 of the Act. Section 107 expressly requires as a self-executing condition of each covered contract that no contractor or subcontractor shall require "any laborer or mechanic employed in the performance of the contract to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health or safety" as these health and safety standards are applied in the rules of the Secretary of Labor.

(c) The term "subcontractor" under section 107 is considered to mean a person who agrees to perform any part of the labor or material requirements of a contract for construction, alteration or repair. Cf. *MacEvoy Co. v. United States*, 322 U.S. 102, 108-9 (1944). A person who undertakes to perform a portion of a contract involving the furnishing of supplies or materials will be considered a "subcontractor" under this part and section 107 if the work in question involves the performance of construction work and is to be performed: (1) Directly on or near the construction site, or (2) by the employer for the specific project on a customized basis. Thus, a supplier of materials which will become an integral part of the construction is a "subcontractor" if the supplier fabricates or assembles the goods or materials in question specifically for the construction project and the work involved may be said to be construction activity. If the goods or materials in question are ordinarily sold to other customers from regular inventory, the supplier is not a "subcontractor." Generally, the furnishing of prestressed concrete beams and prestressed structural steel would be considered manufacturing; therefore a supplier of such materials would not be considered a "subcontractor." An example of material supplied "for the specific project on a customized basis" as that phrase is used in this section would be ventilating ducts, fabricated in a shop away from the construction job site and specifically cut for the project according to design specifications. On the other hand, if a contractor buys standard size nails from a foundry, the foundry would not be a covered "subcontractor." Ordinarily a contract for the supplying of construction equipment to a contractor would not, in and of itself, be considered a "subcontractor" for purposes of this part.

29 CFR 1926.14**FEDERAL CONTRACT FOR "MIXED" TYPES OF PERFORMANCE**

(a) It is the intent of the Congress to provide safety and health protection of Federal, federally financed, or federally assisted construction. See, for example, H. Report No. 91-241, 91st Cong., first session, p. 1 (1969). Thus, it is clear that when a Federal contract calls for mixed types of performance, such as both manufacturing and construction, section 107 would apply to the construction. By its express terms, section 107 applies to a contract which is "for construction, alteration, and/or repair." Such a contract is not required to be exclusively for such services. The application of the section is not limited to contracts which permit an overall characterization as "construction contracts." The text of section 107 is not so limited.

(b) When the mixed types of performances include both construction and manufacturing, see also 1926.15(b) concerning the relationship between the Walsh-Healey Public Contracts Act and section 107.

29 CFR 1926.15
RELATIONSHIP TO THE SERVICE CONTRACT ACT;
WALSH-HEALEY PUBLIC CONTRACTS ACT

(a) A contract for "construction" is one for nonpersonal service. See, e.g., 41 CFR 1-1.208. Section 2(e) of the Service Contract Act of 1965 requires as a condition of every Federal contract (and bid specification therefor) exceeding \$2,500, the "principal purpose" of which is to furnish services to the United States through the use of "service employees," that certain safety and health standards be met. See 29 CFR Part 1925, which contains the Department rules concerning these standards. Section 7 of the Service Contract Act provides that the Act shall not apply to "any contract of the United States or District of Columbia for construction, alteration, and/or repair, including painting and decorating of public buildings or public works." It is clear from the legislative history of section 107 that no gaps in coverage between the two statutes are intended.

(b) The Walsh-Healey Public Contracts Act requires that contracts entered into by any Federal agency for the manufacture or furnishing of materials, supplies, articles, and equipment in any amount exceeding \$10,000 must contain, among other provisions, a requirement that "no part of such contract will be performed nor will any of the materials, supplies, articles or equipment to be manufactured or furnished under said contract be manufactured or fabricated in any plants, factories, buildings, or surroundings or under working conditions which are unsanitary or hazardous or dangerous to the health and safety of employees engaged in the performance of said contract." The rules of the Secretary concerning these standards are published in 41 CFR Part 50-204, and express the Secretary of Labor's interpretation and application of section 1(e) of the Walsh-Healey Public Contracts Act to certain particular working conditions. None of the described working conditions are intended to deal with construction activities, although such activities may conceivably be a part of a contract which is subject to the Walsh-Healey Public Contracts Act. Nevertheless, such activities remain subject to the general statutory duty prescribed by section 1(e). Section 103(b) of the Contract Work Hours and Safety Standards Act provides, among other things, that the Act shall not apply to any work required to be done in accordance with the provisions of the Walsh-Healey Public Contracts Act.

29 CFR 1926.16

RULES OF CONSTRUCTION

(a) The prime contractor and any subcontractors may make their own arrangements with respect to obligations which might be more appropriately treated on a jobsite basis rather than individually. Thus, for example, the prime contractor and his subcontractors may wish to make an express agreement that the prime contractor or one of the subcontractors will provide all required first-aid or toilet facilities, thus relieving the subcontractors from the actual, but not any legal, responsibility (or, as the case may be, relieving the other subcontractors from this responsibility). In no case shall the prime contractor be relieved of overall responsibility for compliance with the requirements of this part for all work to be performed under the contract.

(b) By contracting for full performance of a contract subject to section 107 of the Act, the prime contractor assumes all obligations prescribed as employer obligations under the standards contained in this part, whether or not he subcontracts any part of the work.

(c) To the extent that a subcontractor of any tier agrees to perform any part of the contract, he also assumes responsibility for complying with the standards in this part with respect to that part. Thus, the prime contractor assumes the entire responsibility under the contract and the subcontractor assumes responsibility with respect to his portion of the work. With respect to subcontracted work, the prime contractor and any subcontractor or subcontractors shall be deemed to have joint responsibility.

(d) Where joint responsibility exists, both the prime contractor and his subcontractor or subcontractors, regardless of tier, shall be considered subject to the enforcement provisions of the Act.